

(1971) 03 BOM CK 0031
In the Bombay High Court

Chinnubhai Chandulal Parikh and Another	APPELLANT
Vs	
Dhanyakumar Motiram Belokar and Others	RESPONDENT

Date of Decision : 02-03-1971

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 147, 147(1)

Citation : (1971) CriLJ 1597

Hon'ble Judges : Chandurkar, J

Bench : Single Bench

Judgement

Chandurkar, J.—The dispute which is the subject matter of this revision application is an off shoot of another long standing dispute between Digambari and Swetambari sects of Jain. In Sirpur, taluq Washim, District Akola, there is a temple of Autarkical Parshwanath in which admittedly there is an idol of Devi Padmawati. It is the right to worship this deity of Devi Padmawati that gave rise to an apprehension of breach of peace and tranquillity resulting in the Sub Divisional Magistrate, Washim, passing a preliminary order u/s 147 (1) of the Criminal Procedure Code. The party No. 1 belonged to Digambari sect of Jains, while the party No. 2 belonged to the Swetambari sect. Before the Sub Divisional Magistrate the contention on behalf of the party No. 1 was that the idol of Devi Padmawati in the said temple has been worshipped exclusively by Digambari and that the party No. 2 have no right to worship of that deity. On the other hand, the party No. 2 claimed that the deity of Padmawati was really installed by the Swetambari and that it was an Adhistayak Devta of Shri Antariksha Parshwanath Maharaj and worshipping of that Devta is an integral part of worshipping of the main deity of Shri Antariksha Parshwanath Maharaj.

Their further case was that even with regard to this deity of Padmavati, the rights of the Swetambari and the Digambari were regulated by an earlier decision given by the Privy Council, arising out of Civil Suit No. 4 of 1910, which was reported in Honasa v. Kalyanchand, 25 Nag LR 163 : AIR 1929 PC 261.

2. Both parties filed affidavits of several persons and some documents were also

filed by them. The Sub Divisional Magistrate inspected the spot on 16th January 1969 and he found that none of the Alankar of the deity were Swetambari, as, according to him, the silver Chandoda, the brass Nandadeep and bronze bell and the copper plate indicated that they were offerings of Digambar pilgrims. On perusal of the material which was put before the Sub Divisional Magistrate and a part of which consisted of certain statements made by some witnesses in Civil Suit No. 4 of 1910, the learned Magistrate came to the conclusion that the Swetambari had failed to prove that they had purchased the idol because, even though accounts had been maintained for a long period, there was no evidence to show when the idol was consecrated. He referred to the depositions of certain witnesses in Civil Suit No. 4 of 1910 and on the basis of the statements made in that case he came to the conclusion that the idol of Devi Padmawati, from its appearance and its condition, belonged to the Digambari and was a Digambari Goddess. In order to show that the Swetambari had not worshipped the idol of Devi Padmawati within a period of three months from the date of the preliminary order, the learned Magistrate also referred to certain statements made by one Mulchand Ganeshlal in an earlier proceeding u/s 147 of the Criminal Procedure Code. He rejected the affidavits filed on behalf of the party No. 2 and found that two witnesses on behalf of the Swetambari had disowned their deposition and Samshersing and Jagannath Zangoji were the employees of the Swetambaris. The affidavits of other persons Ganeshrao, Mulchand and Chunibhai were also rejected on the ground that they were employees of the Swetambari and he observed that Mulchand had admitted before the Taluq Magistrate in an earlier proceeding u/s 107 of the Criminal Procedure Code that he had only nodding acquaintance with the English Language and yet, according to the learned Magistrate, the affidavit has been sworn in English. The entries from the account books filed on behalf of the party No. 2 were rejected because, according to the learned Magistrate, there was no evidence corroborating the entries made in the account books. Having thus rejected the affidavits and the documents filed on behalf of the party , No. 2, the learned Magistrate found that the alleged right had been exercised exclusively by the party No. 1 within three months from the institution of the said enquiry and he ordered that the party No. 2 or any one in their interest shall not attempt in any manner whatsoever to exercise such right of worship until they obtain a decree or order of a competent Court adjudging them to be entitled to such right.

3. Against this order the party No. 2 filed a revision application, which was decided by the Additional District Magistrate, Akola. The Additional District Magistrate held that the decision of the Privy Council in the earlier proceedings did not deal with the alleged right to worship Goddess Padmawati and that the controversy in that case related exclusively to the right to worship and manage the main deity, namely, Antariksha Parshwanath Maharaj and he held that the Privy Council judgment, which merely gave a right to worship to both the sects in the temple, did not conclude the question about the nature of several deities in the temple, including that of the marble idol of Devi Padmawati. A contention

was raised before the Additional District Magistrate that the evidence of witnesses taken from Civil Suit No. 4 of 1910 could not be referred to in the present proceedings. He referred to the earlier statement made by the counsel for the Digambari before him that those witnesses had died long back, and therefore, according to the learned Additional District Magistrate the evidence of those witnesses, which was against the interest of their sect, could reasonably be accepted as testimony of dead persons. On the merits of the question the Additional District Magistrate declined to interfere with the appreciation of evidence by the Sub Divisional Magistrate. It was argued before him that the Sub Divisional Magistrate had not taken any evidence and that he could not decide the matter on affidavits. The Additional District Magistrate took the view that Section 147 (2) of the Criminal Procedure Code made the Provisions of Section 145 thereof applicable in the case of such an enquiry, and therefore, giving of evidence by affidavits was permissible. He thus declined to interfere with the order passed by the Sub Divisional Magistrate and rejected the revision application. The party No. 2 has now filed this revision application.

4. Before going to the merits of the contentions raised by the learned Counsel challenging the two adverse orders passed against the applicants, it is necessary to refer to a preliminary point which is taken by the learned Counsel for the applicants. It is contended that the right in the instant case, which was disputed, related to worshipping of a deity and that such right was not covered by right of user of any "land or water" as explained in Sub-section (2) of Section 145, as contemplated by Section 147 (1) of the Criminal Procedure Code, and therefore, according to the learned Counsel, the entire proceedings before the Sub Divisional Magistrate would be without jurisdiction. It is contended that even according to the Digambari as a result of the decision of the Privy Council the Swetambari had a right of access to the temple of Antariksha Parshwanath Maharaj, that they had also a right of management and worship, and therefore, the right to use the temple not being in dispute at all, the right of user of any land as contemplated by Section 147 (1) was not disputed and unless a right of user of any land as contemplated by Section 147 (1) was disputed proceedings u/s 147 of the Criminal Procedure Code could not be validly instituted.

5. Now, it is not possible to read the words "right of user of any land" in Section 147 (1) of the Criminal Procedure Code in the narrow sense in which the I learned Counsel wants them to be read. In-I deed, the question whether a right of worship in a temple amounts to a right of user of land as explained in Section 145 and as contemplated by Section 147 (1) of the Criminal Procedure Code does not seem to be open to controversy. In *Re Pandurang Govind* ILR (1900) Bom 527 a Division Bench of this Court has taken the view that a dispute relating to the right of performing religious service in a public temple when it is likely to cause a breach of the public peace, falls u/s 145 of the Criminal Procedure Code, A similar question was also considered by Vivian Bose J. of the Nagpur High Court in *Kaji Abdul Majid Shah v. Mohammad Saheb Azizuddin* AIR 1941 Nag 171. In that case the question was whether a dispute regarding the right to

receive offerings at a shrine could be the subject matter or a proceeding u/s 147 of the Criminal Procedure Code and following a decision of the Madras High Court in *Velappa Goundan v. Rama-swami Goundan* AIR 1938 Mad 537 it was held that where a dispute regarding the right to receive the offerings at a shrine centres around and depends upon the right to sit in a particular spot the dispute relates either to the possession of the land or to its use and hence an order could be made u/s 145 or Section 147 of the Criminal Procedure Code. The view of the Madras High Court on which reliance was placed by Bose J. was put in the following words:

It seems to me that where the dispute is regarding a right which is inseparably connected with the use of any land or building, it must be regarded as being within the purview of Section 147. It may be that the dispute in actual fact may have more to do with what a man does in the temple after entering into it and not so much with his actual entry into the temple;

nevertheless where the right regarding which a dispute exists is one which is inseparably connected with the right to enter a building and cannot be dissociated from it the dispute cannot be said to be not one regarding an alleged right of user of the building.

6. There was a conflict in the Calcutta High Court on the question whether a right of user of "land or water" covered the right to worship in a temple. This conflict was resolved by a Full Bench of that Court in *Dhirendra Nath Das Vs. Hrishikesh Mukherjee and Others*, . In that case the petitioner before the High Court claimed to be a Shebait of a deity known as Gopalji Thakur and the opposite parties who were religiously minded Hindus contended that Gopalji Thakur was a public deity and that the temple in which the deity was housed and the adjoining lands formed a public debutter and that from time immemorial the Hindus of the locality used to worship the said deity in the temple and offer puja to it. The petitioner had, according to the opposite parties, attempted to obstruct the public in the worship of the deity by keeping the door of the temple closed and refusing would be worshippers access thereto and this conduct was alleged to have inflamed the feelings of the devout and religious Hindus, with the result that there was likelihood of breach of peace. A proceeding u/s 147 having been drawn up, the petitioner moved for quashing the proceeding. The argument advanced on behalf of the petitioner in that case was that the dispute was a dispute as to the right of religiously minded Hindus of the locality to worship the particular deity and that where the dispute concerned merely a right to worship, it could not possibly be said to be a dispute relating to user of land, and therefore, it could not fall within the purview of Section 147 of the Criminal Procedure Code. Delivering the judgment of the Full Bench Harries Chief Justice negating this contention observed:

The user of the temple will depend on the purposes for which a person has entered the precincts of the temple. If those purposes are devotional then he uses the temple in a particular manner. If some one denies his right to worship,

he denies his right to use the temple in a devotional manner. That is to my mind a clear denial of his right to use the temple and such a right falls within Section 147 Criminal Procedure Code.

7. The right regarding which a dispute is likely to cause breach of peace contemplated by Section 147 (1) is a right of user of any "land or water" as explained in Section 145 (2) of the Criminal Procedure Code. Sub-section (2) of Section 145 provides that "for the purposes of this section the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property." Thus the word "land" in Sub-section (1) of Section 147 includes a building, and, a temple is obviously a building, and therefore, covered by "land" in Section 147 (1) of the Criminal Procedure Code. The right to worship is a right to use the temple in a particular manner, and therefore, the right to worship must inevitably become a part of the right to use land, within the meaning of Section 147 (1) of the Criminal Procedure Code. There is, therefore, no doubt not only having regard to the words used in Section 147 (1) but : also having regard to the authorities referred to above that a proceeding u/s 147 (1) of the Criminal Procedure Code can validly be taken where there is a dispute with regard to a right of worship of a deity in the temple. It is not, therefore, possible to accept the contention of the learned Counsel for the applicants that the entire proceedings were without jurisdiction.

8. There is, however, one grave error in which the Sub Divisional Magistrate seems to have fallen. The Sub Divisional Magistrate has decided the dispute before him without recording any evidence and has chosen to proceed to enquire into the existence of the alleged right on the basis of the affidavits filed by both the parties. It appears to me that such a course is not permissible in a proceeding u/s 147 (1) of the Criminal Procedure Code.

9. It is vehemently contended on behalf of the party No. 1 that the scheme of Section 147 does not rule out a decision on the basis of affidavits filed by the parties and though Section 147 (1-A) requires the Magistrate to receive all such evidence as may be produced by the parties respectively, there is an enabling provision in the latter part of the same Sub-section which enables the Magistrate to receive affidavits when he thinks it proper to do so. The basis of this argument is that even in the case of a proceeding u/s 147, the procedure prescribed by Section 145 has been made permissible and since Section 145 (1) of the Criminal Procedure Code expressly requires the Magistrate to decide matter on affidavits alone, though he is not precluded from recording other oral evidence, he can, u/s 147, similarly decide the dispute between the parties on the basis of affidavits.

10. In my view, this contention runs counter to the scheme of the provisions of Section 147, Sections 147 (1) and 147 (1-A) of the Criminal Procedure Code are as follows:

147(1) Whenever any District Magistrate, Sub Divisional Magistrate or Magistrate

of the First Class is satisfied from a police-report or other information, that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water as explained in Section 145, Sub-section (2) (whether such rights be claimed as an easement or otherwise), within the local limits of his jurisdiction, he may make an order in writing stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend the Court in person or by pleader within a time to be fixed by such Magistrate and to put in written statements of their respective claims, and shall thereafter inquire into the matter in the manner hereinafter provided.

(1-A) The Magistrate shall then peruse the statements so put in, hear the parties, receive all such evidence as any be produced by them respectively, consider the effect of such evidence, take such further evidence, if any, as he thinks necessary and, if possible, decide whether such right exists and the provisions of Section 145 shall, as far as may be applicable in the case of such inquiry.

It is necessary to reproduce Section 145 (1) of the Code also, which is as follows:

145(1) Whenever a District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class is satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute and further requiring them to put in such documents, or to adduce, by putting in affidavits; the evidence of such persons, as they rely upon in support of such claims.

Now, it must be noted that the words shown in the bracket in Sub-section (1) and Sub-section (1-A) of Section 147 were added by Act No. XXVI of 1955 by which the words "and further requiring them to put in such documents, or to adduce, by putting in affidavits, the evidence of such persons, as they rely upon in support of such claims" were added in Section 145 (1). Section 147 of the Code before its amendment in 1955 was as follows:

147(1) Whenever any District Magistrate, Sub Divisional Magistrate or Magistrate of the first class is satisfied, from a police-report or other information, that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water as explained in Section 145, Sub-section (2) (whether such right be claimed as an easement or otherwise) within the local limits of his jurisdiction, he may make an order in writing stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend the Court in person or by pleader within a time to be fixed by such Magistrate and to put in written statements of their respective claims, and shall thereafter inquire into the

matter in the manner provided in Section 145, and the provisions of that section shall, as far as may be, be applicable in the case of such inquiry.

It will thus appear that the words "in the manner hereinafter provided" in Sub-section (1) of Section 147 were substituted for the words "in the manner provided in Section 145, and the provisions of that section shall, as far as may be, be applicable in the case of such inquiry." The substitution of the words "in the manner hereinafter provided" in Section 147 (1) was followed by addition of Sub-section (1-A) and the manner in which the enquiry u/s 147 (1) must be conducted by the Magistrate concerned must, therefore, be the one which is expressly laid down in Sub-section (1-A). Sub-section (1-A) of Section 147 requires the Magistrate to peruse the statements put in by the parties, to hear the parties, to receive all such evidence as may be produced by the parties respectively, to consider the effect of such evidence, to take such further evidence, if any, as he thinks necessary and then, if possible, decide whether the alleged right exists. The course of the enquiry is thus clearly laid down and there is no reference in this provision to receive any affidavits by the Magistrate, but on the other hand he is required to receive such evidence as may be produced by the parties respectively. This evidence no doubt may be oral or documentary. Great stress is, however, laid on the words which follow, namely, that "the provisions of Section 145 shall, as far as may be, be applicable in the case of such inquiry". Now, if the procedure right from the perusing of the statements to the decision of the question regarding the alleged right is already laid down in Sub-section (1-A) of Section 147, it is difficult to hold that because of these words in Sub-section (1-A) the Magistrate is invested with a power or jurisdiction to decide the matter only on affidavits. The words "as far as may be" are not without significance. The conduct of the enquiry -as to possession of land or water contemplated in Section 145 is no doubt governed by Sub-sections (1), (4), (5), (7), (8) and (9), but since Sub-section (1) of Section 147 is a self-contained provision with regard to the procedure for the making of an enquiry the only provisions which become applicable by virtue of the last clause of Sub-section (1-A) of Section 17 are Sub-sections (7), (8) and (9) of Section 145. I am supported in the view which I am taking by several authorities.

11. In *Manik Chand Vs. Bhubneshwar Prasad*, it has been observed after referring to the relevant provisions of Section 147:

Thus, the procedure now to be followed in a proceeding u/s 147 is the same "as that in a proceeding u/s 145 before the amending Act of 1955 came into effect.

When (sic) u/s 147 (1) of the Criminal Procedure Code a Magistrate acts wrongly in calling upon the parties to file affidavits, which could not be substituted for their examination in Court and that the words "and the provisions of Section 145 shall, as far as may be, be applicable in the case of such enquiry" in Sub-section (1-A) of Section 147 merely indicate that in respect of other matter of procedure, the procedure to be followed in a proceeding u/s 147 will, as far as possible, be the same as that in a proceeding u/s 145. It was also held that as it was clearly

laid down in Sub-section (1-A) of Section 147 that the Magistrate shall receive all such evidence as may be produced by the parties respectively, and as nothing has been said in that Sub-section about adducing evidence of persons by putting in their affidavits, the legislature could not have intended by the words to lay down that affidavits of witnesses could be a substitute for their examination in Court even in a proceeding u/s 147. This decision was followed by the same Court in Sharda Prasad Singh and Another Vs. Satya Narain Singh and Others, . It was also followed by the Orissa High Court in Lakshmidhar Patel v. Tejraj Patel ILR (1964) Cut 206 where Chief justice observed that the amendment made to Section 147 (1) would seem to indicate that the old procedure of taking evidence should be adhered to in a proceeding under that section. It was held that the entire proceeding was vitiated by the failure of the Magistrate to follow the mandatory provisions of Section 147, Criminal Procedure Code.

12. The Patna High Court view was also followed in by the Madras High Court in B. Jayarama v. Bhoomi Ammal, 1964 (1) C LT 600 (Mad) where it has been observed that the Magistrate has no jurisdiction in the light of the circumscribed scope of Section 147 (1-A) contrasted to Section 145, Criminal Procedure Code, to call upon parties to file affidavits in a proceeding u/s 147 or to accept and act upon such affidavit evidence. In a later decision in Ellappa Goundar v. Govindara Goundar 1969 1 MLJ 585 also the Madras High Court took the same view and it was held that Section 147 (1-A), Criminal Procedure Code, makes it clear that the Magistrate can receive evidence and act upon such evidence .whereas Section 145 (1) provides for filing of affidavits. u/s 145 (4) the Magistrate can peruse the affidavits. In contradistinction to Section 145 (1) and (4), Section 147 (1-A) does, not give power to the Magistrate to receive affidavit and consider them but he can only receive evidence and consider the same. That also is the view of the Rajasthan High Court, as will be seen from a decision in Nanga v. Phool Singh, ILR (1965) Raj 549. The learned Judge referring to Sub-section (1-A) of Section 147 of the Code observed:

This Sub-section entitles the parties to the proceedings to adduce evidence. The Magistrate also is empowered to take further evidence if he thinks necessary. The word "evidence" so far as oral evidence is concerned means the statements of witnesses before the Court in relation to matters of facts under inquiry. Wherever the legislature intended that, evidence might be given by means of affidavits it has made a special provision for it in the Code, for instance in Sections 145, 510-A and 539-A. If the legislature would have said so just as it has done in the case of proceedings u/s 145 of the Code.

Referring to the words "provisions of Section 145 shall, as far as may be, be applicable in the case of such inquiry," occurring in Sub-section (1-A) of Section 147, it is observed that these words only indicate that to other matters of procedure such as are contained in Sub-sections (5), (7) and (9) of Section 145 they would, as far as may be, be applicable to proceedings u/s 147.

13. It will thus appear that the Magistrate, had no jurisdiction to decide the

dispute between the parties, before him merely on the basis of affidavits without recording such evidence as the parties choose to tender before him. The order of the Magistrate must, therefore, be held to be vitiated and is liable to be set aside.

14. This finding is, in my view, enough to dispose of this revision application, but in view of the nature of the contest between the parties, it will be advisable in the interest of justice and with a view to reduce the scope of the controversy between the parties to consider the contention raised on behalf of the applicants that the foundation of their right to worship the idol of Goddess Devi Padmawati in the temple was the decision of the Privy Council. This contention has been negated by the Additional District Magistrate, and in my opinion, rightly so.

15. The learned Counsel appearing on behalf of the applicants relied mainly on the decision of the Trial Court in Civil Suit No. 4 of 1910 and the decision of the Privy Council in support of his stand that the applicants were entitled as a matter of right to worship the idol of Goddess Devi Padmawati. It is not, however, disputed before me that neither the decision of the trial Court in Civil Suit No. 4 of 1910 nor the decision of the Privy Council directly deals with the alleged right to worship Goddess Padmawati. Some reference was made to issue No. 1 in the judgment in Civil Suit No. 4 of 1910 and to the finding given thereon. Issue No. 1 was as follows:

Whether the temple of Shri Antariksha Parshwanath at Sirpur and that idol therein belong to the Shwetambari or to Digambari sect of the Jain community?

My attention was drawn to the finding on this issue which is given in Paragraph 33 of the judgment in Civil Suit No. 4 of 1910. The finding was that the title and right of management of the Sansthan have been proved by- the plaintiff's Swetambari as-theirs exclusively. It is contended that this finding has not been upset by the Privy Council in the appeal which went to the Privy Council against the decision of the-Judicial Commissioner of the Central Provinces who had upheld the decision of the trial Court. It is argued that the Privy Council had upheld the decree of the appellate Court, namely, the Court of the Judicial Commissioner, -which had declared and held that the Swetambari were entitled to the exclusive management of the temple. It is obvious that none of these two decisions, namely, that of the Privy Council and their trial Court, made any reference to the Goddess Devi Padmawati. The only reference-in terms of the issue was to the Temple of Shri Antariksha Parshwanath Maharaj at Sirpur, but it is contended that along with, the right to worship the idol of Shri Antariksha Parshwanath there was an incidental right to worship the idol of Goddess Devi Padmawati, and therefore, the right to worship the idol of Goddess Padmawati must be said to follow from the decisions of the trial Court and the Privy Council in the litigation of 1910.

16. Now, the judgments of the trial Court and the Privy Council clearly show that at no stage of those proceedings was the right to worship the idol of Goddess Padmawati in the temple of Shri Antariksha Parshwanath was in dispute and

there was no adjudication with regard to the alleged¹ right as a result of those two decisions. These decisions must be taken to decide strictly the controversy before those Courts and it cannot become a matter of inference whether the case¹ of worship of the idol of Padmawati, other than Shri Antariksha Parshwanath, was decided by those Courts or not. The judgments will have to be restricted to controversy between the parties in those Courts-and by no stretch of imagination can it be said that the right to worship the idol of Goddess Padmawati flowed from the decision of the trial Court and the Privy Council in the litigation of 1910. The Sub-Divisional Magistrate and the Additional District Magistrate were therefore, right in negating the contention of the present applicants that the right to worship the idol of Devi Padmawati flowed from the Privy Council decision.

17. It was also contended that the only other basis on which the alleged right of the applicants, who belong to the Swetambari sect, to worship the idol of Goddess Padmawati was founded was fact that the idol itself was established and consecrated by Swetambaris. This is a matter on which no adjudication at this stage is possible. No doubt, the Sub-Divisional Magistrate has found against the applicants on the plea that the idol has really been consecrated by the Swetambari themselves. The evidence in the form of account-books to show that there were entries of expenditure incurred for the purchase of the idol and with regard to expenses incurred as also the entries with regard to the ornaments alleged to have been purchased and the receipts given to devotees for the offerings made to the idol of Padmawati cannot by themselves be pieces of substantive evidence. This matter will have to be decided on such evidence which the parties may tender before the Sub-Divisional Magistrate as the matter is now being remanded back to him.

18. Several other contentions were raised with regard to the admissibility or inadmissibility of certain items of evidence in the form of depositions of witnesses" from the earlier litigation of 1910 and with regard to certain statements made in Miscellaneous Criminal Cases 5 of 1965 and 16 of 1964. Determination of these objections- now becomes academic in view of the fact that I have held that there has been no enquiry according to law by the Sub-Divisional Magistrate. The parties would be free to raise objections, if any, to the admissibility of such evidence as is already on record or as will be tendered by them.

19. In view of the foregoing discussion therefore it is necessary to set aside the orders of the Sub-Divisional Magistrate and the Additional District Magistrate and to send the case back to the Sub-Divisional Magistrate for a decision according to law on the limited question whether the present applicants or the party No. 2 are able to establish a right in them to worship the idol of Goddess Devi Padmawati and whether this right was exercised within three months next before the institution of the enquiry. The Sub-Divisional Magistrate shall ignore all the affidavits which have been filed on record and allow the parties to adduce such

evidence as they choose to tender before him, oral and documentary, and after hearing parties decide the matter according to law.

20. The revision application is thus allowed.